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## RECENT DEVELOPMENT

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### ***STEAMFITTERS LOCAL UNION NO. 602 V. ERIE INS. EXCH: A COMMERCIAL PROPERTY OWNER OWES NEIGHBORS A DUTY TO MAINTAIN PROPERTY SO THERE IS NOT AN UNREASONABLE RISK OF FIRE SPREADING TO THE NEIGHBORS' PROPERTIES.***

**By: Antonina Clay**

The Court of Appeals of Maryland held that commercial property owners owe a duty of reasonable care to manage property in a way that prevents a dangerous condition, located on their property, from harming neighboring properties. *Steamfitters Local Union No. 602 v. Erie Ins. Exch.*, 469 Md. 704, 749, 233 A.3d 59, 85 (2020). Owning property comes with a duty to maintain the property in a way that would not harm neighboring owners. *Id.* A duty arises when a dangerous condition is present, and the owner knows or should have known of the condition. *Id.* The court also held that expert testimony is not required to prove the requisite duty of care. *Id.* at 749, 233 A.3d at 86. The average person should know the steps to take to prevent a fire from spreading. *Id.* at 749-750, 233 A.3d at 86.

Steamfitters Local Union No. 602 (“Steamfitters”) owns a union hall in Prince George’s County, Maryland. The Heating, Piping and Refrigeration Training Fund (“Training Fund”) had an agreement with Steamfitters to train its apprentices in the union hall. On April 6, 2015, a fire broke out on Steamfitters’ property. The fire spread to the adjacent construction yard owned by Gordon Contractors, Inc. (“Gordon”). Gordon stored foam insulation along the chain-link fence separating the two properties, which melted and caused fire to spread to multiple vehicles and a dumpster. The fire also spread to property on the other side of Gordon owned by Falco Industries, Inc., C & M Properties, LLC, C & M Properties Delaware, LLC, and Garage Center, LLC (“Falco”).

The fire originated in a mulched area along the chain-link fence on Steamfitters’ property, which was caused by a lit cigarette discarded in the mulch. One of Steamfitters’ employees testified that he had seen many cigarette butts in the mulch and that a fire could be started from a lit cigarette butt being discarded into the mulch. The Prince George’s County Fire Marshal’s Office obtained two of three surveillance camera videos showing the fire but failed to obtain the footage from the camera on Steamfitters’ property.

After a jury trial in the Circuit Court for Prince George’s County, the court found Steamfitters liable for the damage to Gordon and Falco’s properties.

Erie Insurance Exchange (“Erie”), Gordon’s insurance company, was also awarded damages. Steamfitters appealed to the Court of Special Appeals of Maryland, which affirmed the circuit court’s judgment. Steamfitters filed a petition for writ of certiorari with the Court of Appeals of Maryland, which was granted.

The Court of Appeals of Maryland addressed four issues: (1) does a commercial property owner owe its neighbors a duty of reasonable care to stop a dangerous condition from spreading when the commercial property owner knows or should know of the dangerous condition; (2) is expert testimony necessary to establish the duty of reasonable care; (3) was giving the jury an instruction on the spoliation of evidence proper; and (4) did the circuit court erroneously grant summary judgment on the contractual indemnification claim? *Steamfitters Local Union No. 602*, 469 Md. at 715, 233 A.3d at 65.

The court began its analysis focusing on whether Steamfitters owed a duty to its neighbors, Gordon and Falco. *Steamfitters Local Union No. 602*, 469 Md. at 727, 233 A.3d at 72. A duty to prevent injury to a plaintiff is one element required to establish negligence. *Id.* There is no universal test to determine if a duty exists, so courts consider the specific facts of the case and many different factors in determining duty. *Id.* at 727-28, 233 A.3d at 73.

The court articulated that owning and maintaining property comes with a “common law duty to use reasonable care” to not harm one’s neighbors. *Steamfitters Local Union No. 602*, 469 Md. at 728, 233 A.3d at 73. This duty arises when there is a dangerous condition on the property and the owner was on notice about it. *Id.* Here, Steamfitters’ employees knew or should have known that there was a large amount of discarded cigarette butts in the mulched area by the chain-link fence. *Id.* at 734, 233 A.3d at 76. These employees had been in the area multiple times before the fire. *Id.* Steamfitters took no action to reduce the risk of a fire starting despite awareness of numerous cigarette butts in the mulch and the possibility of a fire starting. *Id.* at 734, 233 A.3d at 76. Although the mulch was used in a traditional manner, Steamfitters’ duty to Gordon and Falco arose because individuals were carelessly discarding cigarette butts into the mulch, increasing the risk of a fire starting. *Id.* at 733, 233 A.3d at 76-77. Thus, Steamfitters owed a duty to Gordon and Falco to use reasonable care in the upkeep of its property so that a dangerous condition on its property would not spread and harm Gordon and Falco. *Id.* at 736, 233 A.3d at 78.

The court then determined whether the jury needed expert testimony in order to understand the danger of a fire starting from discarded cigarette butts in mulch. *Steamfitters Local Union No. 602*, 469 Md. at 736, 233 A.3d at 78. Generally, expert testimony is only required when “the subject of the inference [to be drawn by the jury] is so particularly related to some science

or profession that it is beyond the ken of the average layman....” *Id.* at 737, 233 A.3d at 78 (quoting *Johnson v. State*, 457 Md. 513, 530, 179 A.3d 984, 994 (2018)). When the subject matter of the jury’s inferences is common knowledge to the average person, then no expert testimony is required to establish a duty. *Steamfitters Local Union No. 602*, 469 Md. at 737, 233 A.3d at 78. Many people are aware that discarding cigarettes into mulch, a flammable substance, is a fire hazard, so no expert testimony was needed to establish the duty of care in this case. *Id.* at 737-38, 233 A.3d at 79.

Next, the court examined whether giving the jury an instruction on the spoilation of evidence was erroneous. *Steamfitters Local Union No. 602*, 469 Md. at 738, 233 A.3d at 79. Steamfitters failed to produce surveillance video from its property covering the area where the fire began. *Id.* The video was taped over and destroyed after the fire prompting the circuit court to give the jury an instruction on spoilation of evidence. *Id.* Ultimately, the court stated that it was the jury’s responsibility to hear why the video was not preserved and to make its own decision. *Id.* at 744, 233 A.3d at 83. Therefore, providing the instruction was not erroneous. *Id.*

The final issue the court addressed was whether the circuit court properly granted summary judgment as to the claim of contract indemnification. *Steamfitters Local Union No. 602*, 469 Md. at 745, 233 A.3d at 83. Steamfitters and Training Fund had an agreement allowing Training Fund to use the union hall as an apprentice school. *Id.* at 715, 233 A.3d at 66. The agreement contained a clause indemnifying Steamfitters for Training Fund’s actions but did not contain anything about Steamfitters’ own negligence. *Id.* at 746-48, 233 A.3d at 84-85. Indemnification must be “expressly or unequivocally” stated in order for it to apply. *Id.* at 748, 233 A.3d at 85. Since the agreement did not mention anything about indemnifying Steamfitters for its own negligence, summary judgment in favor of Training Fund was proper. *Id.* at 749, 233 A.3d at 85.

In *Steamfitters Local Union No. 602*, the Court of Appeals of Maryland held that commercial property owners have a duty to exercise reasonable care in managing property so that a dangerous condition will not spread and cause harm to neighboring properties. The court also held that no expert testimony was required to establish this duty. Property owners are now offered more protection when their neighbors are negligent and are able to satisfy the duty requirement in a negligence action without difficulty. Commercial property owners will need to be more diligent in maintaining their property and educating their employees on potentially dangerous hazards on their property.